



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 71 OF 2017

REPUBLICPROSECUTOR

VERSUS

BETH NJERI WARURA.....ACCUSED

RULING

[1] The Accused person herein was arraigned herein on **18 December 2017** on a charge of Murder Contrary to **Section 203** as read with **Section 204** of the **Penal Code, Chapter 63** of the **Laws of Kenya**. It was alleged that on the **9 December 2017** at **Langas within Uasin Gishu County**, she murdered **Margaret Warura**. She denied the charge and has been in custody since. The record shows, however, that an application was made for her release on bond on the date of plea; and that a decision was deferred thereon pending a pre-bail report. A pre-bail report was thereafter filed on **15 March 2018** for the Court's consideration on **20 March 2018**.

[2] On the **20 March 2018**, **Ms. Mokuu** for the State opposed the release of the Accused on bond arguing, before **Hon. Ogembo, J.**, that, according to the pre-bail report, there was hostility in the village after the incident as the public had wanted to lynch the Accused. She pointed out that the Accused's family members, notably her husband and children were hostile to the possibility of her release.

[3] **Ms. Chesoo** was however of the view that since no affidavit of the husband was filed herein, there was no justifiable ground for denying the Accused person bond, which is her constitutional right. She pointed out that the mother of the Accused was ready to accommodate her far away from the village in which the incident took place.

[4] Needless to say that bail pending trial is a constitutional right. **Article 49(1)(h)** of the Constitution is explicit that, unless there is some compelling reason, an accused person ought to be released on bail, as a matter of right, pending the hearing and determination of his/her case. So then, what are the matters to take into consideration in such situations? In **Nganga vs. Republic [1985] KLR 451, Chesoni, J.** (as he then was) had the following to say which I find instructive:

“Admittedly, admission to bail is a constitutional right of an accused person if he is not going to be tried reasonably soon, but before that right is granted to the accused, there are a number of matters to be considered. Even without the constitutional provisions ... generally in principle and because of the presumption that a person charged with a criminal offence is innocent until his guilt is proved, an accused person who has not been tried should be granted bail, unless there are substantial grounds for believing that;

- a) the accused will fail to turn up at the trial or to surrender to custody or;**
- b) the accused may commit further offences; or**
- c) he will obstruct the course of justice.**

The primary purpose for bail is to secure the accused person's attendance to court to answer the charge at the specified time."

[5] The pre-bail report filed herein on **15 March 2018** shows that the Accused had three children, and that the victim herein is one of those three children. The report further shows that that one of the surviving children witnessed the murder incident and is traumatized by the same. That the Applicant's husband, Paul Kabenu, is still in shock and was not prepared to support her in any way. Similarly, her mother and siblings were shocked by the incident and have since distanced themselves from the Accused. It was believed by the Probation Officer that if released, the life of the Accused would be at risk; and therefore that it was in her best interests that she continues to stay in custody.

[6] I have considered all the foregoing matters and noted, as was rightly pointed out by Counsel for the Accused, that no affidavit was filed to advert to the factual points relied on by the Prosecution Counsel. Hence, there is no proof that **the accused will fail to turn up at the trial or**

to surrender to custody or; that she may commit further offences; or even that she will obstruct the course of justice. Since, the primary purpose for bail is to secure the accused person's attendance in court to answer the charge at the specified time, my considered view is that no compelling reason has been furnished for the continued incarceration of the Accused. The family members are under no obligation to provide for her or provide the requisite security for her release. It is also evident that the children are no longer in the custody of her husband, having been entrusted to the care of their paternal aunt.

[7] In the premises, I would admit the Accused to bail on the following terms:

[a] That the Accused be released on a bond of **Kshs. 300,000/=** with two sureties standing for her in like sum, to be approved by the Deputy Registrar.

[b] That she refrains from any form of contact with her husband, her two surviving children or their aunt pending the hearing and determination of this case;

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 18TH DAY OF DECEMBER, 2018

OLGA SEWE

JUDGE